1945. K File No. O. Ct. Fees/45

Legal DEPARTMENT
A BRANCH

Subject:—Opinions under the Court Fees Act, 1870.

(P' 16/E)

File No. O. et. Fees/45

Std. Sectt. Slip 24 B c.

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C O N T E N T S.

Legal Department Vol. No. 0. Court fees/1945.

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Received on - 22-7-43.
Registered on - 22-7-43.
Decided on - 16-8-44.
Duration - 12-24.

In the Court of the Second Class Sub-Judge,
At Nandurbar. Exh. 63.

Pleaders. Mr. Pandit and Mr. Desai.

Reg. Civil Suit No. 478 of 1943.

Bapu alias Govind Prayag Patil Gujar of Alkhed. — Plaintiff.

Against.

Mr. Shroff for No. 4.

Mr. Ketkar for Nos. 1 to and 3.

Owner of the shop "Manaklal Jagjiwandas"
1) Krishnachandar, 2) Vithaldas,
3) Uddhawdas Maganlal Wani. Nos. 2.3.
minors guardian and ~~4~~ item No. 1.
4) Govardhandas Purushottamdas Wani
all of Shahada.
Claim Rs. 4800 Declaration. — Defendants. Non-agris.

1. The plff sues to get an execution sales set aside. It appears that the defts 1 to 3 has obtained a decree in R.S.No. 659 of 39 against the plff and in execution of that decree attached the suit land and two other lands in Darkhast No. 829 of 38 and the proceedings were transferred to the Collector. On 18-5-42, 10 acres and 30 gunthas out of the suit land were sold for Rs. 2608/- and the plff then applied to the Collector complaining of undervaluation and agreeing to pay the decretal dues in annual instalments of Rs. 600/- each. The plff was informed by the Mamlatdar that he should deposit Rs. 600/- in the treasury and when that was done he was informed that the sale had been set aside. The plff says that he therefore believed that his application for instalments had been granted. But on 22-10-42 he was informed that a fresh sale would be held on 7-12-42 and then 10 acres and 10 gunthas out of the same land were sold for Rs. 2491/- and the Collector confirmed the sale on 15-4-43. The first contention of the plff is that the Collector had no power to set aside the first sale

and so the second sale is a nullity and should be set aside. He further contends that at the time of the second sale material irregularities were committed, viz., undervaluation, Nilav not made on the time proclaimed and only a part of the Suit land was sold though all the three lands were mentioned in the proclamation. It is alleged that the defts then told the plff that they would reconvey the land if their dues were paid but subsequently refused to act upon the promise and thus committed, a fraud. On these grounds the plff claims to have the sale set aside. Deft 4 is made a party because he purchased the property in the auction on behalf of defts 1 to 3.

2/- The defts contend (exs. 43 & 44) that the Collector had power to set aside the first sale, that there were no irregularities in the second sale, that they did not commit any fraud, and that the suit is barred by sec. 47 of the C.P.Code, and that proper Court-fee has not been paid.

3/- The issues for decision, as framed by Mr. Shaikh, Sub-Judge, are:-

1) Whether the plaint is properly stamped?
2) Whether the suit is barred by Sec. 47 or any provision of the C.P. Code?
3) Whether the plff proves that the sale held by the Collector is a nullity? If so.
4) Whether it should be set aside?
5) Whether the plff proves that the sale confirmed on 13-4-43 is liable to be set aside for the reasons alleged in para. No. 8 of the plaint?
7) What order?

My findings are:- 1, and 3 to 6 in the negative;
2 in the affirmative.
7 as per order.

4/- No evidence was led by the parties and they chose to argue out the case on the admitted record of the case. It is common ground that the first sale was held on 18-5-42. The

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plff then applied to the Collector on 25-5-42 complaining of undervaluation and offering to pay the dues in annual instalments of Rs. 600/- each (ex. 53) On 27-8-42 the Collector ordered that the plff should deposit Rs. 600/- (ex.54), and then that deposit was made he set aside the sale on 22-9-42 and ordered a fresh sale (ex. 55) Fresh sale was duly held on 7-12-42 and the plff was informed by the Mamlatdar that if he had any cause to complain against the valuation he should apply to the Collector within 30 days, and in other cases to the Civil Court within the same period (ex. 56). The plff has failed to prove any material irregularities in the second sale, or fraud on the part of the defts. It is also quite clear that in those cases his remedy was by an application under O.21 rule 91 of the Civil Procedure Code or under Sec. 47, and a separate suit is barred. (See O. 21 rule 92 (3), Chirangeelal Vs. Isherdas A.I.R. 1930 All. 578 of Meenakshi Vs. Palaniappa A.I.R. 1928 Mad. 1158 & Ramchandra Vs. Shama Din A.I.R. 1938 Lahore 600) Hence the finding on issue No. 5.

5/- But the learned pleader for the plff argued that the Collector had no power to set aside the 1st sale and hence the second sale is a nullity. It appears that under sec. 22 A of the D.A.R. Act the Collector can set aside the sale on the ground of undercalculation only, and when sales were set aside by him on other grounds, it has been held that the orders setting aside the sales were bad in law and a suit in that respect could be entertained. (Kathuredas Vs. Pannalal I.L.R. 19 Bom. 217). The ruling in Kathuredas Vs. Jamna Prasad (I.L.R. 25 All. 355) does not directly decide whether a suit is competent or not, for in that case the Collector's action was unheld. In Ramchandra Vs. Mukhdamsingh A.I.R. 1938 Oudh 62 which does not obtain in this province, and in Pita Vs. Chunilal I.L.R. 31 Bom 207 the illegality of the Collector's order was decided in an appeal from an application, and notin a separate suit same was the ase case in Bai Amathi Vs. Madhav Manor I.L.R. 15 Bom. 694. However, the first ruling i.e. (I.L.R. 19 Bom. 217) no doubt establishes that if the Collector sets aside a sale and orders a resale on any ground other than undervaluation his

order are illegal and a suit will lie to set aside a fresh sale held in pursuance of such orders."

6/- But in this case we have seen that the plff had complained of undervaluation (ex. 53) and on his application the sale was set aside, and we can therefore presume that the Collector rightly set aside thefirst sale on that ground. No doubt he ordered the plff to deposit Rs. 500/- but that may be in order to test his benafides. Secondly, in all the reported cases the setting aside of the sale was questioned by the decree-holders or the auction purchasers, for they could make a real grievance of the Collector's actions. In this case, it is surprising to find that the plff who wanted the sale to be set aside, and at whose request the sale was set aside, is making grivance of it. He can not be allowed to approbate and reprobate in this manner, ax manner which is solely designed to protract the proceedings by hook and crook. And lastly, the plff admits (see para 5 of the plaint) that as the second sale is ax nullity, the first sale remains intact. The logical effect of this position would be,, that the first sale will have to be confirmed and I do not know what advantage the plff is going to reap thereby. I do not think that under the Specific Relief Act such a meaningless declaration can be given. However, I hold against the plff for the first two grounds mentioned in this paragraph on issues 3 and 4. As thesecond sale is not a nullity the suit is barred under sec. 47 of the C.P. Code. I am also of the opinion that this suit is not covered by Art. ~~47~~ 17, clause 7 of Schedule II of the Court Fee Act and the fixed Court-fee paid is not proper. (issue No. 1). Under sec. 47 of the C.P.Code a suit can be treated as an application but as this proceeding was commenced more than 30 days of the accual of the cause of action to the plff it is barred under Art. 166 of the cause of action to the plff it is barred under Art. 166 of the Limitation Act.

Order.

7/- Suit is dismissed with costs. Interim rule (ex. 8) is discharged.

Nandurbar. Sd./- V. S. Desai.

Sub-Judge.
(On deputation) 16-8-44.

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In the Court of the District Judge of West Khandesh,

At Dhulia.

Civil Appeal No. of 1944.

Bodhu alias Govind Prayag Patil, Caste Gujar, age 50, occupation agriculturist, resident of Alkhede, T. Shahada. — Appellant. (Ori. Plff.)

Versus.

1. Krishnachandra Manganlal Wani, age 27, Occupation trader, Caste Wani
2. Vithaldas Magnalal Wani age 12, caste Wani, occupation Nil.
3. Udhawadas Maganlal Wani, age, 9. Caste Wani, Occupation Nil.

Respondent Nos. 2 and 3 minors by their guardian and next friend Respondent No. 1. Respondents 1 to 3 are owner of the Shop of Manaklal Jagjivandas and they are residents of Shahada, Taluka Shahada.

4. Gowardhandas Purushottamdas Wani, age 55, caste Wani, Occ. private service, resident of Shahda T. Shahada. — Respondents. (Ori. Defts.)

Claim Rs. Declaration.

The above-named appellant being aggrieved by the order passed on 16-8-1944 by the Second Class Sub-Judge (on deputation) of Nandurbar in Reg. Civil Suit No. 478 of 1943 begs to appeal against the said order on the following amongother grounds of appeal viz.,

1. The Lower Court erred in dismissing the ap llants suit.
2. The Lower Court erred inholding that the action of the Collector insetting aside the first sale on 22-9-1933 was proper and legal.
3. The Lower Court also erred in holding that appellant should have applied to the Collector within 30 days after the fresh sale held on 7-12-1942 if he had any cause to complain against the valuation.
4. The Lower Court also erred in holding that the appellant should have applied to the Court within the same period in

any case other than the one mentioned in ground No. 3.

5. The reasoning adopted by the Lower Court in holding that the appellant's remedy in case of material irregularity or fraud, was by an application under Order 21 Rule 91 or Sec. 47 of the C.P.Code is defective and based on wrong assumptions.

6. The Lower Court erred in holding that this separate suit filed by the appellant is barred.

7. The Lower Court committed an error in presuming that the Collector rightly set aside thefirst sale on the ground of under valuation complained of by the appellant.

8. The Lower Court did not give due consideration to the fact that the Collector had not authority to set aside first sale except on the ground of undervaluation under Sec. 22A of the D.A.R. Act: and even thenif the action was taken by the Collector under Sec. 22A of the D.A.R. Act it was time barred andhence illegal.

9. The Lower Court was also wring in holding that the Collector ordered the appellant to deposit Rs. 600/- to test his bona fide.

10. The Lower Court erredin holding that the appellant was approbating the reprobating with theintention of protracting theproceedings by hook and crook.

11. The Lower Court was wrong in holding that the appellant admitted that the first sale remained in tact because the second also was a nullity.

12. The Lower Court erred in holding that the suit was not covered by Art. 17 Clause III(7) Schedule II of the Court Fee Act.

13. The Lower Court approached the whole suit from an altogether wrong point of view.

14. The decision of the Lower Court is against law, and equity in case.

Dhulia.

28th September, 1944. Sd./- M.H.Apte.

Pleader for the appellant.

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10915 dt. 21-12-44

Submitted.

Please see below, the letter from the District Govt. Pleader, West Khandesh dated 18.12.1944. A question regarding Court Fees has been raised in a Civil Appeal in the District Court against a decree passed by the Subordinate Judge, Nandurbar in Suit No. 478 of 1943 between private parties. The suit was for a declaration that the auction sale of certain propertyheld by the Collector in execution proceedin s transferred to him by the Civil Court under section 68 of the Civil Procedure Code was illegal and void and for an injunction restreining the defendant from taking possession of the property. Govt. was not a party to the suit. In paragraph 7 of the plaint it is stated that the suit being for a declaration has been brought on a fixed Court Fee of Rs. 15 and that for the purposes of jurisdiction andpleader's fees the suit is valued at Rs. 4800 which is the market value of the property. The learn d trial Judge held that the plaint was not properly stamped, but he dismissed the suit on merits. He did not determine the proper amount of Court fees nor did he call upon the plaintiff to sup ly the deficit Court fee stamp und r Order VII Rule 11(b) before proceeding with the suit on merits. In appeal before the District Court, the plaintiff appellant has again paid a Court fee stamp of Rs. 15 only. The District Court has therefore raised the question of Court fees payble in this case and has issued notice to theDistrict Govt. Pleader. The plaintiff has paid a fixed fee of Rs. 15 on the assumption that the suit is for a declaration without any consequential relief and therefore governed by Article 17(iii) of Schedule II of the Court Fees Act. This is clearly incorrect because the suit is evidently one for a declaration with consequential relief and comes within the purview of section 7(iv)(c) of the Court Fees Act. Article 17(iii) obviously cannot be applied to it. The District Govt. Pleader is of opinion that as the suit is for a declaration with a conse-quential relief, under section 8 of the Suits Valuation Act, its value for the purposes of Court fees and jurisdiction is the same and that since the plaintiff has valued the suit at Rs. 4800 for the purposes of jurisdiction, the Court Fees should be paid on that amount.

Section 7(iv)(c) of the Court Fees Act provides that in suits to obtain a declaratory decree or order, where consequential relief is prayed, court fee should be paid on the amount at which the relief sought is valued in the plaint or memorandum of appeal, subject, in Bombay, to a minimum of Rs.5. It is further provided that in such suits the plaintiff must state the amount at which he values the relief. Section 8 of the Suits Valuation Act provides that where in suits other than those referred to in the Court Fees Act section 7 paragraphs v, vi and ix and paragraph x clause (d), Court fees are payable ad valorem under the Court fees Act, the value as determinable for the computation of Court fees and the value for the purposes of jurisdiction shall be the same. This section has been construed to mean that in cases falling under section 7(iv)(c) the value determinable for the purposes of Court fee governs the value for the purposes of jurisdiction. It has been held that the valuation for the purposes of Court fee should be determined first and that for the purposes of jurisdiction should follow on the same, and that it does not mean that if the suit is values for the purposes of jurisdiction, it must be valued on the same amount for the purposes of Court fee (see I.L.R. 47 All. 501; I.L.R. 43 Bom. 376; I.L.R. 12 Rang. 335). It follows therefore that when in a suit of this nature the plaintiff has stated the amount at which he values the relief sought, that will also be the amount at which the suit will be valued for the purposes of jurisdiction and if, in any case, the value of the relief sought does not accord with the value placed on the suit for the purposes of jurisdiction, that will not be a valid reason for ordering the plaintiff to pay a Court fee based on the valuation for jurisdiction. If however the plaintiff fails to fix the valuation for Court fee purposes but fixes one for jurisdictional purposes only, as he happened in this case, different considerations arise. It has been held that if the plaintiff fails to fix a figure expressly for Court fee purposes on the erroneous supposition that the suit is not covered by section 7(iv)(c) and separately values the suit for jurisdictional purposes at a certain figure, he should be taken as k

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having valued the relief sought by him by at this amount. (See Court Fees Act by A. N. Khanna (1941) p. 55 and 67; see also A. I. R. 1935 Lah. 698 and A. I. R. 1936 Mah. 703). This view seems to be inconflict with the view of the Rangoon Hig Court expressed in I. L. R. 12 Rang. 335. In the words of Leach J. theCourt Fees Act is in the nature of a taxing statute and must be construed strictly and the Court Fees Act requires the litigant to value the relief sought and pays Court fee on the value declared by him and nothing more. If the plaintiff omits to mx make this valuation the proper course would seem to be to return thepl int to the plaintiff to value the relief sought as provided in section 7(iv) of the Act. The question is not free from doubt but the District Government Pleader may be instructed to appear and support the view taken by him.

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No. 1058.

Office of the

Remembrancer of Legal Affairs.
Bombay Castle, 5th February 1945.

Subject:- Appeal in Civil Suit No. 478 of 1943 in the Court of the Second Class Sub-Judge, at Nandurbar.

With reference to his letter No. 859 dated the 18th December 1944, on the subject noted above, the District Government Pleader, West Khandesh, Dhulia, is requested to appear in the District Court and urge that the plaintiff should required to pay court fees on the amount of Rs. 4800/-.

for Remembrancer of Legal Affairs.

To

The District Government Pleader,

West Khandesh,

Dhulia.

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Chaliagaon, K.K.

22-8-45.

From

The Sub-Government Pleader,

Chaliagaon.

To

Remembrancer of Legal Affairs, Subj:- Court fee on application for time for filing written statement in pauper applns

Bombay.

Sir,

I have the honour to inform you that recently we had an inspection of our court by the District Judge. In the inspection-notes, amongst other points referred to, there is one about the court fee stamp on applications for time of filing written statements presented by the S.G.P; in Pauper Applications. The District Court this time held that such court fee stamp is necessary on such applications. Upto now it was the practice to present these applications without stamps. In many cases we have to apply for time twice or thrice for W.S. as we do not always get instructions from the Revenue authorities quite in time. It may many times so happen that after giving 2 or 3 applications we are ultimately required to admit the applicant as pauper as per instructions of the Revenue authorities, and in such case, the expenses of stamp would be a burden to Government. Under these circumstances, I shall be obliged if you will please let me know by reference to authorities and cases if any, whether court fee stamp is necessary on our application s for W.S. in pauper applications. If there by any Govt. Resolution, it may please be quoted and its copy also furnished.

An early reply will be appreciated as there are good many papper applications filed in this court.

Thanking you.

I have the honour to be ,

Sir,

Your most obedient servant,

sd/- R.G. Patwardhan

Sub' Govt. Pleader, Chaliagaon.

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No. 2858
Office of the R.L.A.
Bombay Castle, 13th April, 1945.

Subject :- Court fee on adjournment applications.

MEMORANDUM.

With reference to his letter dated the 22nd February 1945, on the subject noted above, the Sub Government Pleader, Chalisgaon, East Khandesh is informed that it is doubtful whether an application in writing for adjournment needs any Court fee; but it is certain that an oral application for adjournment needs no such fee and consequently he shouldn as far as possible try to get adjournments on oral requests and if the Court requires him to make an application in writing he may refuse to do so and an adverse order of the Court can be challenged in appeal. There are cases and commentories which suggest that if it is permissible for an application to be oral, putting it in writing does not creat liability to Court fees. But there are contrary cases on that point and it is doubtful if an argument in those lines would be upheld. (see Obhrai's Court fees Act, pages 47 and 650, Chitaley and Rao's Court fees Act, page 78)-

Sd./- R.T.K.
for Remembrancer of Legal Affairs.

To

The Sub Government Pleader, Chalisgaon,
East Khandesh.

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This is a reference by the Bombay Police Courts Bar Association. Sec. 45 of the Bom. City Police Act empowers a Chief Presidency Magistrate to determine the amount of compensation payable to any person of lose or damage caused to any property or in respect of death or grievous hurt caused to any person by anything done in the prosecution of the common object of an unlawful assembly. It seems that the amount of compensation so awarded has to be claimed by the party concerned by an application in writing to the Chief Presidency Magistrate. Such applications were hereto filed with a Court-fee stamp of two annas only as, in the the Association's opinion, they were supposed to fall within the scope of Article 1(a) of Schedule II of the Court Fees Act and Govt. Notification, Revenue Department, No. L. C. 5488 dated the 11th November 1936: (see Bom. Stamp Manual p. 160). Recently however the Chief Presidency Magistrate has ruled that applications of this type should be presented with a Court fee stamt of ten annas (the enhanced rate current from 1-1-1944) since is his opinion they fall more appropriately within Article 1(b) of Schedule II.

The Association contends that such applications are Governed by Article 1(a) of Schedule II mainly because such applications do not amount to a complaint or charge of any offence and are made to the Chief Presidency Magistrate as a person a designate and not as a Criminal Court (in re; Usman Haji Mahomed, I.L.R. 54 Bombay 664).

The H. D. agrees with the view of the Chief Presidency Magistrate and has referred the papers u. o. to the R. L. A.

Reply:-

The view taken by the Chief Presidency Magistrate and the Supdt. of Stamps appears tobe correct.

sd./- P.N.M.
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L.D.R.I. 5779/10-7-45.

Submitted wi h reference to the R.D. note at p. 43 ante.

2. It appears that in pursuance of the Bombay Increase of ~~being levied by some Courts in the Province of Bombay~~ Court Fees Act XV of 1943, the surcharge on the process fees in being levied by some courts in the Province of Bombay and not by other courts. Section 2 of the Bombay Act, ~~Bombay~~ No. XV of 1943 lays down that all the fees leviable under the Court Fees Act 1870 should be increased by a surcharge at the rates specified in the Schedule annexed to the said Act. Section 20 of the Court Fees Act empowers the H.C. to frame rules for the levy of process fees in criminal Courts. The D.M., Kaira has opined that as the H.C. has not revised the rules regarding the process fees contained in Chapter II of the H.C. Cri. Circular Orders in the light of sec. 2 of the Bombay Act No. XV of 1943, it is not possible to charge the in the process fees. He had therefore requested Govt. to move the H.C. for the issue of requisite orders entitling Cri. Courts to levy the surcharge authorised by new Act. The Commr., N. D. in his endorsement at p. 1 antehas stated tht as the Act has alreday authorised Cri. Courts to levy the surcharge it does not appear necessary to ask the H.C. tot issue any orders authorising Cri. Courts to levy surcharge on the process fees. But in his letter dated the 5th May 1945 the Commr., N.D. has, it seems, changed this view as he also has therein requested Govt. to move the H.C. to revise the rules regarding the process fees so as to permit thelevy of 25% surcharge on the process fees. The H.C. was accordingly requested. But their lordships stated that they saw no reason to frame rules suggested by the Govt. One Mr. S.L.Vaidya has complained that a surcharge is being levied on process fees by some courts and not be others. TheSarvajanik Sabha of Poona has also requested Govt. to issue a press not making it clear that no increase in process fees is intended. The H.D. wants to issue, in view of all this, a circular to all the officers concerned directing that a surcharge should not be levied on the process fees under Bombay Act XV of 1943. The papers have been forwarded to the R.D.A. before the issue of this Circular.

Reply may be:-

The question whether a surcharge can be levied on the process fees under Ben. Act XV of 1943 is sub judice and the decision of the High Court should be awaited.

Sd./- R.T.L.
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R.L.A.

The matter is not sub-judice.

Reply - "seen and returned"

Id./- P.N.H.
16/8/45.

U.R. to H.D., No. 6146, dated the 20th August 1945.

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Office of the R.L.A.

The question for the consideration of the R.L.A. is whether the application at p. 17 ante is liable to a Court-fee under Art. 1(e) in Schedule II of the Court Fees Act. 1870.

Under Art. 1(e) in Schedule II of the Court-Fees Act, 1870 application or petition is liable to a court fee when presented to a Chief Commissioner or other Chief Controlling Revenue or Executive authority or to Commissioner of Revenue or Circuit or to any Chief officer charged with the executive administration of a Division and not otherwise provided for by this Act. "Art. 1(e) applies only to petitions and applications in connection with proceedings before the Chief Commissioner or other authority specified in the clause with a view to exercise or non exercise of some power or authority conferred upon him by some law or rule having the force of law" (see Chhrai's Court-Fees and Jurisdiction p. 653). In pursuance of the delegated authority the Bombay Government has taken steps to execute the order issued by the Central Government against Majih Kitabi under section 3(2) of the Foreigners Act; and to invoke the exercise of the power delegated to the Bombay Government under section 10 to dispose of applications to postpone the execution of orders issued under section 3(2) the present application at p. 17 ante has been made by Majih Kitabi to the Secretary, Political and Services Department. It is the Deputy P. & S. D. who exercises the powers delegated to the Bombay Government by the Central Government under the Foreigners Act. Consequently the application appears to fall under Art. 1(e) in Schedule II of the Court Fees Act.

Sd./-
Remembrancer of Legal Affairs.

R.L. to P.& S.D., No. 9556, dated the 20th December, 1945.

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